HUSBAND AND WIFE — RECOVERY BY WIFE FOR LOSS OF *CONSORTIUM* DUE TO NEGLIGENT INJURY OF HUSBAND. — The plaintiff alleged that her husband, while working for the defendant, was injured as the proximate result of the defendant's negligence, that by reason thereof she had suffered a nervous shock, resulting in physical ailments, had been forced to pay sundry expenses, had been deprived of support and the care, protection, companionship, aid and society of her husband, and that her husband had brought action against the defendant and judgment had been for the defendant. A statute provided that damages for torts sustained by the wife were her own and could be recovered by her suing alone. (1913 N. C. CON. STAT., § 2513.) The defendant demurred. *Held*, that the demurrer be overruled. *Hipp* v. *Dupont de Nemours & Co.*, 108 S. E. 318 (N. C.).

The court directs its attention largely to the question of loss of *consortium*, and its argument is that as the husband can now no longer recover for the injury to the wife, if she cannot recover there has been a real injury for which there is no redress. The wife has suffered an injury separable from the husband's. See *Flandermeyer* v. *Cooper*, 85 Ohio St. 327, 98 N. E. 102. For this she should be compensated. See 26 HARV. L. REV. 74. Yet in spite of the removal, by Married Women's Acts, of the common-law reasons for denying recovery, the unanimous American authority prior to this case denied her recovery on various grounds. *Smith* v. *Nichols Bldg. Co.*, 93 Ohio St. 101, 112 N. E. 204; *Kosciolek* v. *Portland Ry., etc. Co.*, 81 Ore. 517, 160 Pac. 132; *Bernhardt* v. *Perry*, 276 Mo. 612, 208 S. W. 462; *Feneff* v. *New York, etc. R. Co.*, 203 Mass. 278, 89 N. E. 436. Most of these grounds apply equally to actions by the husband when the wife has been injured negligently, yet there recovery is allowed even though the wife has prosecuted an action to judgment. *Neumeister* v. *City of Dubuque*, 47 Iowa, 465; *Guevin* v. *Manchester St. Ry.*, 78 N. H. 289, 99 Atl. 298. See *Selleck* v. *City of Janesville*, 104 Wis. 570, 80 N. W. 944. *Contra*, *Bolger* v. *Boston Elevated Ry. Co.*, 205 Mass. 420, 91 N. E. 389. The other reasons advanced are that the wife's action, unlike the husband's, is not based on loss of services; and that if she recovers the defendant will be subjected to double damages. But loss of services is not the gist of the husband's action. See *Baker* v. *Bolton*, 1 Campb. 493; *Guevin* v. *Manchester St. Ry.*, *supra*. See 10 COL. L. REV. 678. And double damages are impossible under a statute which makes the cause of action for a tort to the wife, her property. See 1868 N. C. CONST., Art. X, § 6; 1913 N. C. CON. STAT., § 2513. There is no substantial reason why the wife should not recover.

INSURANCE — EMPLOYERS' LIABILITY INSURANCE — SUBROGATION OF INSURER TO EMPLOYER'S STATUTORY RIGHT AGAINST TORTFEASOR INJURING WORKMAN. — An employee of the H Company was injured in the course of his employment through the defendant's negligence. Compensation was awarded him, and paid by the H Company's employers' liability insurance company. The Workmen's Compensation Act provides that an "employer, having paid the compensation, or having become liable therefor, shall have the right to recover in his own name." (1918, 3 CARROLL KY. STAT., 5 ed., § 4890.) The insurance company sued for its own benefit in the name of the H Company. *Held*, that the suit be dismissed. *Henderson Telephone & Telegraph Co.* v. *Owensboro Home Telephone & Telegraph Co.*, 233 S. W. 743 (Ky.).

The court reasons that there is no right of subrogation because the insurer's business is to pay on its policies, and hence it has suffered no loss. It is to be regretted that basic principles of insurance law should be disregarded in developing this comparatively new branch of the subject. The court's reasoning

applies equally to fire and marine insurance, where it is well settled that there is a right of subrogation. *Hall & Long* v. *Railroad Companies*, 13 Wall. (U. S.) 367; *Wunderlich* v. *C. & N. W. Ry. Co.*, 93 Wis. 132, 66 N. W. 1144; *The Frank G. Fowler*, 8 Fed. 360 (S. D. N. Y.). That the insured's original cause of action was statutory is immaterial. *Hart* v. *Western R. R.*, 13 Met. (Mass.) 99; *Caledonia Ins. Co.* v. *No. Pac. Ry. Co.*, 32 Mont. 46, 79 Pac. 544. It is true that no subrogation is allowed to life insurance companies. *Conn. Mutual Life Ins. Co.* v. *R. R. Co.*, 25 Conn. 265; *Ins. Co.* v. *Brame*, 95 U. S. 754. But employers' liability insurance is strictly a contract of indemnity, and therefore resembles, in this particular, fire and marine rather than life insurance. See RICHARDS, INSURANCE, 3 ed., § 478; SHELDON, SUBROGATION, 2 ed., § 239. The right of subrogation was recognized without difficulty in the analogous case of land-occupiers' liability insurance. *Wanamaker et al.* v. *Otis Elevator Co.*, 228 N. Y. 192, 126 N. E. 718. In fire insurance, subrogation is granted against defendants who are not negligent, provided the insured had an action. *Hall & Long* v. *Railroad Companies, supra; Hart* v. *Western R. R., supra. A fortiori* it should be granted against the negligent defendant in the principal case. The obvious result of the court's decision is that the employer pays for insurance which inures to the benefit of the tortfeasor, in the event that the employee elects to claim compensation. The Circuit Court of Appeals has reached an opposite result. *Travelers' Ins. Co.* v. *Great Lakes Co.*, 184 Fed. 426 (6th Circ.).

MANDAMUS — ADEQUACY OF OTHER REMEDIES — INADEQUATE REMEDY BY APPEAL. — The respondent, as judge in the court below, refused to make a reasonable allowance to the relator for expenses in prosecuting her suit for separate maintenance, on the ground that he had no jurisdiction to make such award. This was error cognizable by appeal. The relator petitions for a writ of mandamus to compel the respondent to make such allowance. *Held*, that the writ issue. *State ex rel. Travis* v. *Maxwell*, 108 S. E. 418 (W. Va.).

Where a court refuses to act because it mistakenly decides it has no jurisdiction so to act, mandamus is a proper remedy. *State* v. *Smith*, 69 Ohio St. 196, 68 N. E. 1044; *Wheeling Bridge & T. Ry. Co.* v. *Paull*, 39 W. Va. 142, 19 S. E. 551. But it is well settled that mandamus to an inferior court will not issue where there is an adequate remedy by appeal. *Commonwealth* v. *Thomas*, 163 Pa. St. 446, 30 Atl. 206; *State* v. *Superior Court*, 20 Wash. 502, 55 Pac. 933; *Succession of Macarty*, 2 La. An. 979. A usual code provision is that the writ must issue "where there is not a plain, speedy, and adequate remedy in the ordinary course of law." See 1915 CAL. CODE CIV. PROC., § 1086; 1907 MONT. REV. CODE, § 7215; 1913, 2 S. D. COMP. LAWS, CODE CIV. PROC., § 765. Courts have occasionally been willing to find that delay or inconvenience makes appeal an inadequate remedy. *State* v. *Johnson*, 105 Wis. 90, 80 N. W. 1104; *Ketchum Coal Co.* v. *District Court*, 48 Utah, 342, 159 Pac. 737; *State* v. *District Court*, 126 Minn. 501, 148 N. W. 463. See 79 CENT. L. J. 295. But *cf. State* v. *Hadley*, 20 Wash. 520, 56 Pac. 29; *Ex Parte Whitney*, 13 Pet. (U. S.) 404. Particularly has this been true in Alabama and Michigan. *Ex Parte King*, 27 Ala. 387; *Dillon* v. *Judge*, 131 Mich. 574, 91 N. W. 1029; *T. & B. Co. R. Co.* v. *Iosco Circuit Judge*, 44 Mich. 479, 7 N. W. 65. See HIGH, EXTRAORDINARY LEGAL REMEDIES, 3 ed., §§ 186, 187. The West Virginia Court has also indicated a tendency to liberality. *People's National Bank* v. *Burdett*, 69 W. Va. 369, 71 S. E. 399. In the principal case it finds the remedy by appeal inadequate, because the relator needs funds now to prosecute her suit. *Ex Parte King, supra.* A just result is thus reached by stretching the principles of mandamus; but it would be better, instead of overworking and extending extraordinary remedies, to reach justice through a reformed appellate procedure.